

**U.S. DISTRICT COURT  
DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZHIJUN XIA,

Defendant.

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Case No. 4:20 CR 3062

**DEFENDANT’S SENTENCING  
BRIEF**

**Preliminary Statement**

It appears as if the acceptance of responsibility issue is not contested by the United States Attorney’s office. That concession is greatly appreciated. Therefore, the undersigned will address the “tutor” issue and finally, general thoughts on sentencing.

**Tutor Issue**

In the Court’s own tentative findings, the Court properly pointed out the distinction between a position of trust that our society recognizes and merits a 2-point increase when that trust is violated; and that of a position, while typically trustworthy, does not merit a 2-point increase. The example used by the Court of an attorney stealing from a trust fund versus a teller at a bank stealing from a client’s deposits is accurate and the law, though trust is implicit in both roles.

The Court is well aware that the Defendant never held himself out to be a tutor; never had any other tutoring jobs; actually, never got paid. And while certainly not the mother’s fault,

she basically just trusted a stranger to spend time with her daughter. Suppose when the Defendant and mom were in line together, the Defendant had a skateboard; said yes, he knew how to skateboard; then mom asked him to give her daughter a couple of skateboarding lessons – would Xia have then become her “tutor” in skateboarding? Is that worthy of a 2-point increase? Is that similar to a lawyer holding a trust account? The Defendant assenting to a mother’s request to teach her daughter Chinese is not anywhere near the level of breach of trust that a lawyer handling his or her trust account is.

The other thing that concerns the undersigned is the following: The government has artfully spun the relationship as that of a tutor – which breach sounds sinister. The government’s problem is that anyone who is in a position to take advantage of a child, has to know the child in some fashion, unless the child just gets abducted off the street while walking to the ice cream store. Implicit in the definition of taking advantage of a child is being in a position to do so. Therefore, where is the line drawn where a 2-point increase is given, and not? If the Defendant was a neighbor, is that a position of trust that merits a 2-point increase? If he agrees to give her some skateboarding lessons, does that then become grounds for a 2-point increase? The point that is unartfully attempted here is that the guidelines by necessity assumes a prior relationship between the Defendant and the victim. It doesn’t just happen out of nowhere. The 2-point increase is given where as a society we attach a special significance to the relationship such as attorney-client; doctor-patient; etc.

### **Final Thoughts**

The Government is asking for 262 months – the very worst thing that could be given to Mr. Xia given the plea agreement. Perhaps 262 months would be warranted if Mr. Xia was one of the worst people of all times, who has done this a number of times though not convicted. Or

that the victim was 13 years old, not close to 16. What he did needs to be punished. But a sentence on the low end complies and comports with that requirement. 262 months should be saved and used for those who are almost beyond the pale of human decency. Punish the sin, love the sinner is an adage that rings true here.

Finally, the Defendant wants to address the government's brief where it states that it's "preposterous" that the mother might have welcomed the attention Mr. Xia was giving her daughter. It's probably only within the last 100 years and particularly in Western society that 27-year-old men are not fixed up to marry 15-year-old daughters, and younger. The argument by those in favor of the United States having open borders is that what these individuals are doing is not a crime; migration has happened for thousands of years; and their migration is a response to famine or governmental cruelty, etc. Migration is normal in the course and scope of human history. Using that same logic, older men and younger women, even girls, have been paired throughout human history. The undersigned is not suggesting that our norms and laws are wrong but please don't say it's preposterous that the Defendant might have misinterpreted signs and signals. That's never happened in the course of human history, especially between men and women? He might have initiated the relationship, but that doesn't mean he didn't think it was a relationship. Because of that mistake he has paid dearly. Again, respectfully, the sentence should be on the low end.

ZHIJUN XIA, Defendant

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing was forwarded to the parties by way of First Class Mail, E-mail and/or Electronic Service on JULY 22, 2021.

/s/ Steve Lefler

Steve Lefler